

# CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Laura Strauss	Team: Squad #5	CCRB Case #: 202003025	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/22/2020 11:49 PM	Location of Incident: In front of § 87(2)(b) § 87(2)(b)	Precinct: 75	18 Mo. SOL 10/22/2021	EO SOL 5/4/2022	
Date/Time CV Reported Thu, 04/23/2020 12:08 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 05/04/2020 11:09 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			075 PCT
2. PO Marc Whirl	09207	937726	075 PCT
3. POM Kevin Morgan	07698	949365	075 PCT
4. POM Phillip Bilmes	20096	958309	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.PO Marc Whirl	Off. Language: Police Officer Marc Whirl made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b)	
B.PO Marc Whirl	Discourtesy: Police Officer Marc Whirl spoke discourteously to § 87(2)(b)	
C.POM Kevin Morgan	Off. Language: Police Officer Kevin Morgan made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	
D.POM Kevin Morgan	Off. Language: Police Officer Kevin Morgan made remarks to § 87(2)(b) based upon race.	
E.POM Kevin Morgan	Abuse: Police Officer Kevin Morgan threatened § 87(2)(b) with the use of force.	
F.POM Kevin Morgan	Off. Language: Police Officer Kevin Morgan made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b)	
G.POM Kevin Morgan	Discourtesy: Police Officer Kevin Morgan spoke discourteously to § 87(2)(b)	
H.PO Marc Whirl	Off. Language: Police Officer Marc Whirl made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b)	
I.PO Marc Whirl	Discourtesy: Police Officer Marc Whirl spoke discourteously to § 87(2)(b)	
J. An officer	Off. Language: An officer made remarks to § 87(2)(b) based upon race.	
K.POM Kevin Morgan	Abuse: Police Officer Kevin Morgan refused to provide his shield number to § 87(2)(b)	
L.PO Marc Whirl	Abuse: Police Officer Marc Whirl refused to provide his shield number to § 87(2)(b)	
M.POM Phillip Bilmes	Abuse: Police Officer Phillip Bilmes refused to provide his shield number to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
N. An officer	Off. Language: An officer made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	
O. An officer	Discourtesy: An officer spoke discourteously to § 87(2)(b)	
P.POM Kevin Morgan	Abuse: Police Officer Kevin Morgan stopped § 87(2)(b)	
Q.POM Kevin Morgan	Force: Police Officer Kevin Morgan used physical force against § 87(2)(b)	
R.POM Kevin Morgan	Abuse: Police Officer Kevin Morgan drew his gun.	
S.POM Kevin Morgan	Discourtesy: Police Officer Kevin Morgan spoke discourteously to § 87(2)(b)	
T.POM Kevin Morgan	Force: Police Officer Kevin Morgan used physical force against § 87(2)(b)	
U.POM Kevin Morgan	Force: Police Officer Kevin Morgan used a chokehold against § 87(2)(b)	
V.POM Kevin Morgan	Force: Police Officer Kevin Morgan restricted § 87(2)(b)'s breathing.	
W.POM Kevin Morgan	Off. Language: Police Officer Kevin Morgan made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	
X.POM Kevin Morgan	Off. Language: Police Officer Kevin Morgan made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b)	
Y.POM Kevin Morgan	Off. Language: Police Officer Kevin Morgan made remarks to § 87(2)(b) based upon race.	
Z.POM Kevin Morgan	Discourtesy: Police Officer Kevin Morgan spoke discourteously to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

## Case Summary

On April 23, 2020, at approximately 12:08 a.m., § 87(2)(b) called 911 and complained to the operator about this incident but became disconnected before he could be connected to IAB. The operator relayed § 87(2)(b) statements to IAB, and IAB later called § 87(2)(b) back and took his complaint, generating original IAB log § 87(2)(b). The CCRB received this complaint from IAB on May 4, 2020, under referral log § 87(2)(b).

On April 22, 2020, shortly before 11:49 p.m., § 87(2)(b) exited the Pennsylvania Avenue “3” subway station in Brooklyn and began walking east along § 87(2)(b) toward his residence. Police Officers Kevin Morgan, Phillip Bilmes, and Marc Whirl, then assigned to the 75<sup>th</sup> Precinct’s Anti-Crime team, drove up next to him. As § 87(2)(b) walked along § 87(2)(b) PO Whirl allegedly called § 87(2)(b) a “faggot” and a “batty boy” over the vehicle’s PA system (**Allegation A: Offensive Language**, § 87(2)(g); **Allegation B: Discourtesy**, § 87(2)(g)). PO Morgan and § 87(2)(b) began arguing with each other. PO Morgan called § 87(2)(b) a “pussy” and “the N-word” (**Allegations C-D: Offensive Language**, § 87(2)(g)). PO Morgan threatened to “smack” § 87(2)(b) (**Allegation E: Abuse of Authority**, § 87(2)(g)). PO Morgan asked § 87(2)(b) if he knew his own father (**Allegation D**). PO Morgan told § 87(2)(b) “Suck my dick” (**Allegation F: Offensive Language**, § 87(2)(g); **Allegation G: Discourtesy**, § 87(2)(g)). PO Whirl allegedly also told § 87(2)(b) “Suck my dick” (**Allegation H: Offensive Language**, § 87(2)(g); **Allegation I: Discourtesy**, § 87(2)(g)). An officer allegedly said that § 87(2)(b) mother was a “crack-whore” (**Allegation J: Offensive Language**, § 87(2)(g)). § 87(2)(b) asked PO Morgan, PO Whirl, and PO Bilmes for their shield numbers, and they all allegedly refused his request (**Allegations K-M: Abuse of Authority**, § 87(2)(g)). Rather than provide his shield number, an officer allegedly told § 87(2)(b) “Come and take it, pussy” (**Allegation N: Offensive Language**, § 87(2)(g)). **Allegation O: Discourtesy**, § 87(2)(g).

PO Morgan pulled his police vehicle into the wrong lane of traffic, parked it, and exited. PO Morgan allegedly told § 87(2)(b) to “stop” (**Allegation P: Abuse of Authority**, § 87(2)(g)). PO Morgan allegedly repeatedly jabbed § 87(2)(b) in the ribs with his knuckles while saying they could “fight like men” (**Allegation Q: Force**, § 87(2)(g)). PO Morgan allegedly drew his gun and pointed it upwards (**Allegation R: Abuse of Authority**, § 87(2)(g)). PO Morgan repeatedly tried to goad § 87(2)(b) into fighting him. § 87(2)(b) told PO Morgan that he did not want to get shot by the police. PO Morgan returned to the police vehicle to hand off his gun to one of his partners, at which point § 87(2)(b) began walking away from PO Morgan. PO Morgan chased after him and allegedly stopped him by grabbing him (**Allegation P**). PO Morgan told § 87(2)(b) “Better fucking not spit on me” (**Allegation S: Discourtesy**, § 87(2)(g)) and pushed him with two hands on his upper body (**Allegation T: Force**, § 87(2)(g)). While PO Morgan pushed § 87(2)(b) one of his hands allegedly applied pressure to § 87(2)(b) throat and windpipe, which restricted his breathing (**Allegations U-V: Force**, § 87(2)(g)). § 87(2)(b) alerted PO Morgan to a CCTV camera pointing in their direction, at which point PO Morgan went back to the police vehicle. As PO Morgan drove away, PO Morgan called § 87(2)(b) a “pussy,” a “faggot,” and a “bitch-ass nigga” (**Allegations W-Y: Offensive Language**, § 87(2)(g)). **Allegation Z:** § 87(2)(g).

§ 87(2)(g), § 87(2)(b) was not arrested or issued any summonses.

The investigation obtained nearby surveillance video footage which captured a brief portion of § 87(2)(b) interaction with PO Morgan after PO Morgan exited his vehicle. However, the image

quality was very poor (BR 01-03, summarized at BR 04, see Sub-clip #1 at BR 19). § 87(2)(g), § 87(4-b) All references to video evidence below refer to the time stamp in the video player, and not to any on-screen clock embedded in the footage itself.

PO Whirl has since been promoted to detective. PO Morgan and PO Bilmes have since been reassigned to the 75<sup>th</sup> Precinct Detective Squad.

On September 8, 2021, this case was reassigned from Inv. Conor O'Shea to the undersigned after Inv. O'Shea's departure from the CCRB. This investigation was delayed by the COVID-19 global pandemic and delays in scheduling officers for remote interviews.

Patrol Borough Brooklyn North conducted a concurrent investigation into this incident but did not identify any subject officers and closed the physical force and stop allegations as unsubstantiated (BR 16). Their investigation focused on searching for police vehicle GPS data to identify the subject officers, but used an overly narrow time-frame for conducting that search. As a result, PO Morgan, PO Whirl, and PO Bilmes never provided any other official statements about this incident.

### **Findings and Recommendations**

**Allegation (A) Offensive Language: Police Officer Marc Whirl made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b)**

**Allegation (B) Discourtesy: Police Officer Marc Whirl spoke discourteously to § 87(2)(b)**

It is undisputed that PO Morgan was driving his police vehicle, that PO Whirl was in the front passenger seat, and that PO Bilmes was in the backseat.

§ 87(2)(b) testified (BR 05) that as he walked home along § 87(2)(b) he saw a dark gray or black Chevrolet Impala. § 87(2)(b) heard a male voice from the Impala's direction calling out "faggot" and "batty boy" [a Caribbean anti-gay term akin to "faggot"]. § 87(2)(b) realized that the Impala was a police vehicle, and that the vehicle's PA system was transmitting the "faggot" and "batty boy" comments. One of the officers was looking at § 87(2)(b) but another was looking at a Jamaican-looking man on the other side of the street. § 87(2)(b) was initially unsure of whether the officer on the PA system was speaking to him or to the Jamaican man, but later clarified that the officers seemed to be talking to the Jamaican man. The Jamaican man did not appear to be paying attention to the officers. § 87(2)(b) was not able to see who was holding the PA system microphone but believed that the voice calling out "faggot" and "batty boy" was coming from PO Whirl in the front passenger seat, because PO Morgan's hand positioning in the driver's seat indicated that he was not operating the PA system. § 87(2)(b) also noted that he spoke directly to PO Morgan later in the incident and that PO Morgan's voice was noticeably different from the one he heard over the PA system. § 87(2)(b) phone statement (BR 20) was generally consistent with his CCRB interview.

The investigation did not obtain any video footage capturing this portion of the incident.

In the audio recording of § 87(2)(b) 911 call (BR 06, at 01:53), made immediately following the incident, § 87(2)(b) told the operator that an officer used the intercom and called him a "batty boy."

PO Whirl, interviewed approximately 11 months after the incident, testified (BR 07) that he saw § 87(2)(b) walking along the sidewalk on § 87(2)(b). Nothing else about § 87(2)(b) drew his attention to him. § 87(2)(b) then began to curse and yell at the officers. PO Morgan began to

yell back at § 87(2)(b) PO Morgan and § 87(2)(b) may have been cursing at each other, but PO Whirl did not recall what either said. PO Whirl denied calling § 87(2)(b) a “faggot” or “batty boy,” and denied that his partners used either word or phrase.

PO Morgan, interviewed approximately 11 months after the incident, testified (BR 08) that his attention was drawn to § 87(2)(b) because § 87(2)(b) either stopped behind a vehicle or bent down behind a vehicle after he saw the officers’ vehicle. PO Morgan did not recall if his vehicle had a PA system or whether any officer used the PA system during the incident. PO Morgan did not think that he called § 87(2)(b) a “faggot” or a “batty boy.”

PO Bilmes, interviewed approximately 11 months after the incident, (BR 09) testified that he did not recall whether PO Whirl made any statements to § 87(2)(b) PO Bilmes did not recall whether PO Morgan called § 87(2)(b) a “faggot” or a “batty boy.” PO Bilmes denied calling § 87(2)(b) a “faggot” or a “batty boy.”

§ 87(2)(g)

**Allegation (C) Offensive Language: Police Officer Kevin Morgan made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)**

**Allegation (D) Offensive Language: Police Officer Kevin Morgan made remarks to § 87(2)(b) based upon race.**

**Allegation (E) Abuse of Authority: Police Officer Kevin Morgan threatened § 87(2)(b) with the use of force.**

**Allegation (F) Offensive Language: Police Officer Kevin Morgan made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b)**

**Allegation (G) Discourtesy: Police Officer Kevin Morgan spoke discourteously to § 87(2)(b)**

§ 87(2)(b) recounted that PO Morgan slowed his vehicle to a walking pace and drove beside him as he walked down the sidewalk. PO Morgan called § 87(2)(b) a “pussy,” called him “the N-word” a few times, and asked § 87(2)(b) if he knew his own father. § 87(2)(b) laughed off PO Morgan’s comments and told PO Morgan to go about his day and to “fuck off.” At some point, § 87(2)(b) laughingly told PO Morgan, “Suck my dick.” PO Morgan then told § 87(2)(b) “Suck my dick.” PO Morgan appeared to become frustrated that his remarks were not provoking a visible negative reaction from § 87(2)(b) PO Morgan then told him he would “smack” him. § 87(2)(b) replied that he would “smack the shit out of [PO Morgan’s] mother.” PO Morgan then told § 87(2)(b) that he would “smack” his mother.

As noted above, the investigation did not obtain any video footage capturing this portion of the incident.

PO Morgan testified that § 87(2)(b) yelled at the officers, used profanity, and “talk[ed] shit.” PO Morgan stopped the vehicle to hear what § 87(2)(b) was saying. He did not suspect that § 87(2)(b) was committing any criminal offenses. PO Morgan and § 87(2)(b) had a “random conversation.” PO Morgan acknowledged that they both used “hostile” words toward each other. PO Morgan used hostile words because § 87(2)(b) started “talking shit” to him, PO Morgan went to have a conversation with him, and a “back and forth between two grown men” transpired. PO Morgan “had the conversation at the level that § 87(2)(b) was having with [him].” Overall, PO Morgan provided a detailed narrative of his encounter with § 87(2)(b) from beginning to end, specifically describing his initial observations of § 87(2)(b) the tone and tenor of their

conversation, how their conversation escalated as PO Morgan matched § 87(2)(b) “level,” and a few specific statements that he and § 87(2)(b) made. However, PO Morgan testified that he could not recall what he or § 87(2)(b) said to one another while he was still inside his police vehicle. PO Morgan did not recall calling § 87(2)(b) a “pussy” or asking him about his father. PO Morgan “did not think” that he called § 87(2)(b) a “nigga” or a “nigger,” but he could not recall with certainty. PO Morgan also “did not think” that he told § 87(2)(b) to “suck his dick,” but again testified that he could not recall with certainty. He did not recall whether § 87(2)(b) made any statements about any of the officers’ mothers. PO Morgan did not recall telling § 87(2)(b) that he would “smack” him or “smack” his mother. As will be noted below (see **Allegation S**), PO Morgan admitted that he did use profanity with § 87(2)(b) at a later point in the incident. § 87(2)(g), § 87(4-b)

PO Whirl testified that PO Morgan began to yell back at § 87(2)(b) after § 87(2)(b) began yelling and cursing. PO Morgan and § 87(2)(b) may have been cursing at each other, but PO Whirl did not recall what either man said. PO Bilmes did not recall if PO Morgan spoke to § 87(2)(b) before he exited the police vehicle. PO Bilmes and PO Whirl both could not recall whether PO Morgan called § 87(2)(b) a “pussy” or whether PO Morgan told § 87(2)(b) “Suck my dick.” PO Bilmes also could not recall if PO Morgan called § 87(2)(b) a “nigger” or a “nigga,” or whether PO Morgan asked § 87(2)(b) if he knew who his father was. PO Whirl denied that PO Morgan called § 87(2)(b) a “nigger” or “nigga” and denied that PO Morgan asked § 87(2)(b) if he knew who his father was. Neither PO Whirl nor PO Bilmes recalled hearing PO Morgan tell § 87(2)(b) that he would “smack” him or “smack” his mother.

§ 87(2)(g)

PO Morgan admitted to using “hostile” words with § 87(2)(b) admitted to using profanity at a later point in the incident, failed to explicitly deny making any of the alleged remarks, and crucially, even admitted it was possible that he called § 87(2)(b) a racial slur and told him to perform a sexual act. Moreover, PO Morgan was able to recall and describe the incident with a relatively high level of detail. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

The NYPD is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect. Officers must “maintain a higher standard of integrity than is generally expected of others.” Patrol Guide Procedure 200-02 (BR 10). Officers are prohibited from using discourteous or disrespectful remarks regarding another person’s ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability. Patrol Guide Procedure 203-10 (BR 11).

PO Morgan used offensive and discourteous remarks regarding § 87(2)(b) gender, race, and sexual orientation. § 87(2)(g)

At the point that PO Morgan told § 87(2)(b) that he would “smack” him and his mother, he did not suspect § 87(2)(b) of committing any crimes, he was not taking § 87(2)(b) into custody, and he did not have any need or reason to protect himself or others. § 87(2)(g)

**Allegation (H) Offensive Language: Police Officer Marc Whirl made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b)**

**Allegation (I) Discourtesy: Police Officer Marc Whirl spoke discourteously to § 87(2)(b)**  
§ 87(2)(b) recounted that while he and PO Morgan were going back and forth with each other, and while the officers were still in their vehicle, § 87(2)(b) laughingly told PO Morgan to “suck [his] dick.” PO Whirl then interjected and told § 87(2)(b) “Suck my dick.”

PO Whirl denied telling § 87(2)(b) to “suck” his “dick.” PO Morgan did not recall whether PO Whirl told § 87(2)(b) to “suck” his “dick” and did not remember PO Whirl speaking to § 87(2)(b) at all. PO Bilmes did not recall whether PO Whirl made any statements to § 87(2)(b)

§ 87(2)(g)

**Allegation (J) Offensive Language: An officer made remarks to § 87(2)(b) based upon race.**

**Allegation (K) Abuse of Authority: Police Officer Kevin Morgan refused to provide his shield number to § 87(2)(b)**

**Allegation (L) Abuse of Authority: Police Officer Marc Whirl refused to provide his shield number to § 87(2)(b)**

**Allegation (M) Abuse of Authority: Police Officer Phillip Bilmes refused to provide his shield number to § 87(2)(b)**

**Allegation (N) Offensive Language: An officer made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)**

**Allegation (O) Discourtesy: An officer spoke discourteously to § 87(2)(b)**

§ 87(2)(b) testified that while the officers were still in their vehicle, either PO Morgan or PO Bilmes asked if his mother was a “crack whore.” § 87(2)(b) continued to laugh at the officers and to not show any negative reaction to their comments. § 87(2)(b) asked PO Morgan, PO Whirl, and PO Bilmes for their shield numbers. One of the officers—he could not tell which one—said, “Come and take it, pussy.” None of the officers provided their shield numbers to § 87(2)(b)

PO Morgan testified that he did not recall whether he or PO Bilmes told § 87(2)(b) that his mother was a “crack whore.” He denied that § 87(2)(b) requested any shield numbers. He did not recall if he or his partners ever provided any shield numbers to § 87(2)(b). PO Morgan did not recall whether he or his partners said, “Come and take it pussy.” PO Whirl’s and PO Bilmes’ testimonies were generally consistent with PO Morgan’s, with each officer either denying or testifying that they did not recall whether they or their partners asked § 87(2)(b) if his mother was a “crack whore,” whether they refused to provide their shield numbers to § 87(2)(b) or whether they told § 87(2)(b) “Come and take it, pussy.”

§ 87(2)(g)

**Allegation (P) Abuse of Authority: Police Officer Kevin Morgan stopped § 87(2)(b)**

§ 87(2)(b) recounted that PO Morgan exited his vehicle and ordered him to “stop right there,” and § 87(2)(b) complied. Throughout the interaction, PO Morgan repeatedly encouraged § 87(2)(b)

to fight him, hit § 87(2)(b) chest with his knuckles, and drew his firearm. § 87(2)(b) told PO Morgan that he was not going to put any bullets in him and to “get the fuck outta here.” § 87(2)(b) then began quickly walking away from PO Morgan, toward Bradford Street. PO Morgan quickly ran to hand off his gun to one of his partners and then sprinted full speed after § 87(2)(b). PO Morgan asked § 87(2)(b) where he was going, and he did not respond. PO Morgan caught up with § 87(2)(b) at the adjacent corner, approximately 20 feet from where they last interacted, and stopped him by grabbing his backpack.

As previously noted, the investigation obtained CCTV footage which captured a brief portion of PO Morgan’s interaction on the sidewalk with § 87(2)(b) (see Sub-clip #1 at BR 19). The footage is extremely washed out, such that almost the entire image is obscured by whiteness. However, it does confirm that PO Morgan approached § 87(2)(b) on the sidewalk and spoke to him, and that § 87(2)(b) eventually walked away. At approximately 00:08, § 87(2)(b) walks into view from the bottom right of the screen. He stops and appears to be looking toward the road on his right side. At 00:22, PO Morgan comes into view from the direction of the road, consistent with his having exited a vehicle. He stands directly in front of § 87(2)(b) and the two appear to speak and gesture with their hands. The footage appears to freeze for about eight seconds (from 00:44 to 00:52). At 00:57, § 87(2)(b) moves to walk away, and PO Morgan appears to reach out and possibly touch § 87(2)(b) on his left arm or torso. PO Morgan then quickly moves back toward the road. § 87(2)(b) walks away down the sidewalk. PO Morgan takes a couple steps toward § 87(2)(b) but then goes back in the direction of the road. From that point on, the two men are no longer visible due to the poor image quality, so it is unclear if PO Morgan eventually sprinted down the block after § 87(2)(b).

PO Morgan testified that § 87(2)(b) caught his attention when he stopped behind a vehicle or bent down behind a vehicle after seeing the officers’ vehicle. There was nothing that happened throughout the incident that led PO Morgan to believe that § 87(2)(b) may have had a weapon. PO Morgan did not suspect that § 87(2)(b) had committed any crimes or violations. Prior to this incident, PO Morgan had not previously interacted with § 87(2)(b) and did not know anything about his criminal history. PO Morgan initially denied that he told § 87(2)(b) to stop upon exiting his vehicle, and he later stated that he did not “believe” that he ever told § 87(2)(b) to stop, freeze, stay right there, or to hold on. PO Morgan’s intention in approaching § 87(2)(b) was to “educate” him that he sounded stupid. PO Morgan explained that officers are not limited to stopping people to take enforcement action, and that they are encouraged to speak with members of the community. PO Morgan denied that he was conducting a stop in which § 87(2)(b) was not free to leave. PO Morgan did not tell § 87(2)(b) that he was not free to leave at any point, and he denied that he or his partners ever stopped § 87(2)(b) movement. With regard to § 87(2)(b) claim that PO Morgan chased him down the sidewalk, PO Morgan initially only recalled interacting with § 87(2)(b) at one location but later recounted that there was a point at which he walked with § 87(2)(b) while they continued their conversation. They only moved approximately 10 feet away from the location where they initially began speaking.

PO Bilmes and PO Whirl both recounted that they stood at the rear of the police vehicle and, to varying degrees, could not see or hear the interaction between PO Morgan and § 87(2)(b). PO Whirl recounted that he was not listening or paying attention to the conversation between PO Morgan and § 87(2)(b). He heard yelling or a raised voice at certain points, but he was not paying sufficient attention to be able to recount any specific statements. PO Bilmes recounted that he could not see the interaction between § 87(2)(b) and PO Morgan because there were vehicles on the street that obstructed his view. He did not move to get a better view of the interaction since PO Morgan said that he was fine and the interaction did not seem unsafe. There was a subway station above them on § 87(2)(b) which prevented PO Bilmes from hearing what was said between



PO Morgan and § 87(2)(b) PO Bilmes did not recall if a train passed by during the interaction.

PO Bilmes and PO Whirl both stated that they did not recall whether PO Morgan ever told § 87(2)(b) to stop. PO Whirl testified that he did not believe that PO Morgan and § 87(2)(b) moved to another location farther down the block. PO Bilmes recounted that at some point, PO Morgan and § 87(2)(b) walked approximately 20-30 feet from their initial area, but he did not recall if they walked side by side or whether § 87(2)(b) walked away from PO Morgan. In PO Whirl's understanding, § 87(2)(b) was free to leave during the interaction.

Though § 87(2)(b) alleged that PO Morgan instructed him to "stop," grabbed his backpack when he attempted to walk away, and drew his gun, PO Morgan and his partners either denied or did not recall whether each of those occurrences happened. Additionally, PO Morgan categorically stated that § 87(2)(b) was free to leave and that he just approached § 87(2)(b) to "educate" him that he sounded stupid. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Officers may conduct a forcible stop when they have individualized reasonable suspicion that an individual committed, is committing, or is about to commit a felony or misdemeanor. Patrol Guide Procedure 212-11 (BR 13). In determining whether and when a street encounter constitutes a stop, courts consider "whether a reasonable person would have believed, under the circumstances, that the officer's conduct was a significant limitation on his or her freedom." Relevant factors include the location of the encounter, the number of officers involved, whether the officers prevented the individual from moving, the number of verbal commands issued, the content and tone of those commands, and whether an officer drew a gun. *People v. Bora*, 83 N.Y.2d 531 (1994) (BR 14).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (Q) Force: Police Officer Kevin Morgan used physical force against § 87(2)(b)**

§ 87(2)(b):

**Allegation (R) Abuse of Authority: Police Officer Kevin Morgan drew his gun.**

§ 87(2)(b) recounted that PO Morgan began using his knuckles in a jabbing or jostling motion to strike § 87(2)(b) about his chest and ribs. PO Morgan alternated hands as he struck § 87(2)(b) approximately ten times. § 87(2)(b) specified that PO Morgan was not punching him, but was causing pain and appeared to be intent upon provoking § 87(2)(b) into fighting back. PO Morgan also repeatedly verbally encouraged § 87(2)(b) to fight him, saying that they could fight "like men." § 87(2)(b) told PO Morgan that he was not going to touch him. PO Morgan unholstered his handcuffs and gave them to one of his partners, both of whom stayed closer to the vehicle. PO Morgan then returned to § 87(2)(b) and continued hitting § 87(2)(b) hard in the chest. § 87(2)(b) still refused to fight PO Morgan. PO Morgan also drew his gun and held it slightly above shoulder level, pointing it upwards. He never pointed the gun at § 87(2)(b). § 87(2)(b) told PO Morgan that he was not going to put any bullets in him and to "get the fuck outta here."

In the audio recording of § 87(2)(b) 911 call (BR 06, at 00:53), made immediately following the incident, § 87(2)(b) told the operator that PO Morgan shoved him onto the floor and started punching him. § 87(2)(b) did not mention that PO Morgan drew his gun.

As noted above, PO Morgan stated that he exited the vehicle to “educate” § 87(2)(b) and have a conversation with him. PO Morgan did not recall telling § 87(2)(b) that they could “fight like men” and did not recall trying to get § 87(2)(b) to fight him. PO Morgan did not make any physical contact with § 87(2)(b) aside from a later point when PO Morgan pushed § 87(2)(b) as he was about to spit on him. PO Morgan denied touching or pushing § 87(2)(b) chest. PO Morgan denied that he drew his gun at any point. He did recall § 87(2)(b) saying that PO Morgan was going to shoot him or arrest him, or a statement to that effect.

As discussed, PO Bilmes and PO Whirl testified that, for the most part, they could not see or hear the interaction between PO Morgan and § 87(2)(b). PO Whirl did not see PO Morgan touch § 87(2)(b) and denied seeing PO Morgan jab § 87(2)(b) in the chest with his hands by poking or prodding him. PO Whirl did not see PO Morgan draw his firearm. PO Bilmes did not see whether PO Morgan touched § 87(2)(b) or pushed § 87(2)(b) chest. He did not recall seeing PO Morgan draw his firearm.

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**Allegation (S) Discourtesy: Police Officer Kevin Morgan spoke discourteously to § 87(2)(b).**

**Allegation (T) Force: Police Officer Kevin Morgan used physical force against § 87(2)(b).**

**Allegation (U) Force: Police Officer Kevin Morgan used a chokehold against § 87(2)(b).**

**Allegation (V) Force: Police Officer Kevin Morgan restricted § 87(2)(b)'s breathing.**

§ 87(2)(b) recounted that he walked away and PO Morgan chased him down the block. When PO Morgan reached § 87(2)(b) he used “all his force” to push § 87(2)(b) hard in the upper chest and neck with two hands, knocking § 87(2)(b) into a wall that was a few feet away. § 87(2)(b)'s head and elbow hit the wall and then he fell to the ground. § 87(2)(b) added that PO Morgan pressed his thumb against § 87(2)(b) neck near or atop his Adam's apple when he pushed him. This inhibited § 87(2)(b) breathing and caused him to be coughing on the ground afterwards. PO Morgan then stood over § 87(2)(b) and made several punching motions at him, pretending like he was going to hit him, but did not actually hit him. § 87(2)(b) told PO Morgan about the security camera above them on § 87(2)(b). This apparently caused PO Morgan to change his behavior and to retreat to his police vehicle. The push and subsequent impact on the wall caused § 87(2)(b) to sustain an abrasion to his elbow, a small bump to his head, and pain to his head and neck. § 87(2)(b) did not testify that he tried to spit on PO Morgan or that PO Morgan used profanity.

In the audio recording of § 87(2)(b) 911 call (BR 06, at 00:53), made immediately following the incident, § 87(2)(b) told the operator that PO Morgan pushed him into a wall and shoved him onto the floor. § 87(2)(b) stated that his back, neck, and arm were hurting because PO Morgan pushed him into a wall.

PO Morgan testified that § 87(2)(b) spontaneously said that he would be arrested if he spit on PO Morgan. PO Morgan told § 87(2)(b) that he was not arresting him. § 87(2)(b) then hocked up phlegm and moved his head to within two inches of PO Morgan. PO Morgan said something to the effect of, “Better fucking not spit on me.” He used profanity to emphasize the seriousness of his order. PO Morgan pushed § 87(2)(b) with two hands, possibly in his chest area, so that he was out

of spitting range. His push caused § 87(2)(b) to take one or two steps back. PO Morgan did not recall § 87(2)(b) hitting anything or hitting a nearby wall as a result of the push. PO Morgan did not think that § 87(2)(b) fell onto the ground. He did not believe that his hands touched any part of § 87(2)(b) neck when he pushed him. PO Morgan did not make contact with the front of § 87(2)(b) neck or his throat area. § 87(2)(b) never seemed like he was out of breath or like he had the wind knocked out of him. PO Morgan was not aware of § 87(2)(b) sustaining any physical injuries.

As discussed, PO Bilmes and PO Whirl testified that, for the most part, they could not see or hear the interaction between PO Morgan and § 87(2)(b). Both officers stated that they did not see whether PO Morgan pushed § 87(2)(b). PO Whirl stated that he did not see PO Morgan push § 87(2)(b) into a wall. Neither PO Bilmes nor PO Whirl saw § 87(2)(b) fall to the ground or rise from the ground. Neither officer testified to seeing § 87(2)(b) attempt to spit on PO Morgan.

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**Allegation (W) Offensive Language: Police Officer Kevin Morgan made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)**

**Allegation (X) Offensive Language: Police Officer Kevin Morgan made remarks to § 87(2)(b) based upon the perceived sexual orientation of § 87(2)(b)**

**Allegation (Y) Offensive Language: Police Officer Kevin Morgan made remarks to § 87(2)(b) based upon race.**

**Allegation (Z) Discourtesy: Police Officer Kevin Morgan spoke discourteously to § 87(2)(b)**

§ 87(2)(b) recounted that, as the officers entered their vehicle, he immediately called 911 and began speaking with the operator. As PO Morgan drove away, he called § 87(2)(b) a “pussy,” a “faggot,” and a “bitch-ass nigga.” § 87(2)(b) did not specify whether PO Morgan made the remarks through the vehicle’s PA system or if he merely said them aloud from within the vehicle.

In the audio recording of § 87(2)(b) 911 call (BR 06, at 00:04), § 87(2)(b) stated that an officer just hopped out of his vehicle and assaulted him. At 00:09, a loud, unintelligible sound was heard in the background and § 87(2)(b) asked the operator, “Do you hear him? Do you hear him?”

PO Morgan testified that he did not “believe” that he said anything to § 87(2)(b) as he was leaving. PO Morgan did not recall calling § 87(2)(b) a “pussy,” “faggot,” or a “bitch-ass nigga” as he was leaving the scene. Upon listening to the 911 recording, PO Morgan stated that he heard a sound in the background of the audio but did not know what the sound was. PO Morgan did not recall whether he or his partners used the PA system to speak with § 87(2)(b). PO Bilmes did not recall whether PO Morgan called § 87(2)(b) a “pussy,” a “faggot,” or a “bitch-

ass nigga.” PO Whirl did not recall PO Morgan calling § 87(2)(b) a “pussy.” PO Whirl denied PO Morgan calling § 87(2)(b) a “faggot” and a “bitch-ass nigga.” After listening to the 911 audio, PO Bilmes explained that he heard the background sound in the audio, that it could have been the vehicle’s PA system, but that he could not definitively identify the sound. PO Whirl stated that the sound in the 911 audio could have been the vehicle’s PA system. PO Whirl did not recall whether any officers used the PA system to speak to § 87(2)(b) and did not know why the PA system was used at that point or who used it.

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PO Morgan’s failure to deny using such facially offensive language is striking and tends to indicate that § 87(2)(b) account of the incident was accurate. Additionally, § 87(2)(b) immediately called 911 to file a complaint and spontaneously noted to the operator that PO Morgan could be heard during the call, which is consistent with his CCRB testimony that PO Morgan made the remarks to him while he was on the phone with 911. § 87(2)(g)

The NYPD is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect. Officers must “maintain a higher standard of integrity than is generally expected of others.” Patrol Guide Procedure 200-02 (BR 10). Officers are prohibited from using discourteous or disrespectful remarks regarding another person’s ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability. Patrol Guide Procedure 203-10 (BR 11).

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§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (BR 15).
- PO Bilmes has been a member of the NYPD for six years, and this is the first CCRB complaint to which he has been named a subject.
- PO Morgan has been a member of the NYPD for 11 years, and has been named a subject in 16 other cases and 42 other allegations, of which four were substantiated:
  - 201605124 involved substantiated allegations of vehicle stop and frisk against PO Morgan. The Board recommended Formalized Training and the NYPD imposed Formalized Training.
  - 201909062 involved substantiated allegations of discourtesy and failure to provide business card against PO Morgan. The Board recommended Charges and the NYPD has not yet imposed discipline. **The discourtesy allegation involved PO Morgan telling a civilian that he needed to “educate” himself and calling him, “stupid,” “uneducated,” “ignorant,” and, “dumb.”**
  - 202001583 and 202004356 are pending investigation.
  - PO Morgan has been the subject of five additional discourtesy allegations and two offensive language allegations:
    - In 201305937, PO Morgan allegedly told the civilian, “One of your friends tried to throw his hands up at us and he’s real fucked up,” which was closed as unsubstantiated.
    - In 201508611, PO Morgan allegedly told a female civilian that he could not tell that she was a woman, which was closed as unsubstantiated.
    - In 201601814, PO Morgan allegedly called the civilian a “faggot,” which was closed as complainant uncooperative.
    - In 201605124, PO Morgan allegedly told the civilian that he was going to “search his nuts,” which was closed as unsubstantiated.
    - In 201700909, PO Morgan allegedly told the civilian, “Oh, you passed the bar? Shut the fuck up,” “You’re talking all that shit,” and allegedly called him a “dickhead,” which was closed as unsubstantiated.
    - In 201904735, PO Morgan allegedly told the civilian, “You’re probably not a real lawyer. You probably just went to John Jay or something,” which was mediated.
- PO Whirl has been a member of the NYPD for 17 years and has been named a subject in 18 other cases and 36 other allegations, none of which were substantiated.
  - Two complaints against PO Whirl (202001583 § 87(2)(g)) remain under investigation.

### Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of December 22, 2020, the NYC Comptroller’s Office has no record of any Notice of Claim regarding this incident (BR 17).
- § 87(2)(b)

Squad No.: 5

Investigator:	<u>Laura Strauss</u>	<u>SI Laura Strauss</u>	<u>January 28, 2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Daniel Giansante</u>	<u>IM Daniel Giansante</u>	<u>January 28, 2022</u>
	Signature	Print Title & Name	Date

Reviewer:	<u></u>	<u></u>	<u></u>
	Signature	Print Title & Name	Date